IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3115 OF 1994

Tukaram Sakharam Mhapuskar, .. Petitioner

Vs

Pandhari Ramchandra Gangan and ors Respondents

Mr Tajane i/b Mr G.S.Godbole, for the petitioner.

Mr S.V.Sadavarte, for the respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 31st August, 2005.

PC:

1. Heard learned counsel for the parties.

2. This writ petition arises from the orders passed by the Courts below on Exhibit-5 application. The application Exhibit-5 was filed by the petitioner in his Regular Civil Suit No.98/1999, which came to be allowed by the learned Civil Judge, Malkapur by his Judgment and order dated 24.11.1993. Feeling aggrieved and dissatisfied with the said judgment, the respondents-defendants preferred Misc. Civil Appeal

No.318 of 1993, which the Appeal Court allowed by its judgment and order dated 26.4.1994. Against this order, the petitioner-plaintiff preferred the instant writ petition.

3. This Court, while issuing rule in the petition on 28.9.1994, granted ad-interim relief in terms of prayer clause (c). Prayer clause (c) reads thus:

> "(c) That pending the hearing and final disposal of this petition, the respondents, their agents, servants and/or any person claiming through them be restrained by an order and injunction of this Hon'ble Court from disturbing the peaceful possession of the petitioner over the suit property in any manner whatsoever."

Thereafter, it appears that Civil Application No.2430 of 1995 was filed by the petitioner in which the following order was passed.

> "Heard the advocates for both the parties. The order dated 27th April 1995 on Exhibit 69/D is passed by the trial Court mainly on the ground that this High Court is seized of the matter. The petitioner apprehends that the original plaintiff is likely to cut the trees illegally on the suit land. I think that application Exhibit 69/D should be reconsidered by the trial

> court and till a decision thereon is reached afresh by the trial Court, the original plaintiff, i.e. the writ petitioner and the respondents to the C.A. shall not cut any trees on the suit land.
>
> With this order, the civil application is disposed of."

The learned counsel for the parties are not in a position to state whether the suit is still pending. Keeping that in view and considering that the stay to the impugned order dated 26.4.1994 granted by this Court on 28.9.1994 operates till today, in my opinion, there is no point in keeping the petition pending here any more and this can be disposed of without entering into merits of the case. The learned counsel appearing for the parties also fairly agreed for the order which I propose to pass in the petition. Hence, the following order.

(a) The interim order passed by this Court on 28.9.1994 shall remain operative till disposal of Regular Civil Suit No.98 of 91, if not disposed of already.

(b) The trial Court shall decide Regular Civil Suit No.98 of 1991, as expeditiously as possible and

preferably within a period of nine months from the date of receipt of this order, if not disposed of already, on merits in accordance with law and uninfluenced by the orders passed in the proceedings arising from Exhibit-5 application.

(c) Rule is accordingly disposed of.

(D.B.BHOSALE, J.)